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Supreme Court, U.S.
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No. 07-414

In The

Supreme Court of the United States

In re:

YORIE VON KAHL, BRIAN EDWARD RATIGAN, SALVATORE LEONE, RAYMOND L. BLEDSOE, DANIEL ANGEL RODRIGUEZ, MARK ANTHONY CLARK, LARRY EUGENE GEORGE, GARY L. SETTLE, CHARLES BRUCE NABORS, KEVIN LEROY McLAUGHLIN, WARREN ALLEN DITTRICH, TONY EMERY, WILLIAM ANTHONY JOHNSON, RONALD TITLBACH, BENJAMIN F. SHIPLEY, JR., JOSEPH P. RYNCARZ, LONNIE L. GRAVES, TROY LAWRENCE, SR., JEREMIAH J. KERBY, GUY J. WESTMORELAND, JAMES K. VEST, DARRYL L. WILSON, ANTHONY ANTOINE HARTWELL, and DONALD W. ENGELKING,

Petitioners.

PETITION FOR WRITS OF HABEAS CORPUS

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QUESTIONS PRESENTED

A. Whether this Court should exercise its original jurisdiction over this matter in the unique and exceptional circumstances presented and in light of the significant constitutional issues of public import.

B. Whether *Public Law 80-772*, Act of June 25, 1948, Ch. 645, Section 1, 62 Stat. 683 *et seq.*, is unconstitutional and *void* because *H.R. 3190* never passed both Houses as required by Article I, Section 7, Clause 2.

C. Whether permitting post-adjournment legislative business pursuant to *H.Con.Res. 219* violated the Quorum, Bicameral and Presentment Requirements of Article I of the Constitution.

D. Whether post-adjournment signing of *H.R. 3190* by Single Officers of the Houses and presentment to and approval thereof by the President pursuant to *H.Con.Res. 219* violated provisions of Article I of the Constitution.

E. Whether a purported bill signed by the Officers of both Houses of Congress and presented to the President post-adjournment and in absence of quorums, which was not certified as truly enrolled nor the enrolled bill in fact, a clear violation of Title 1, United States Code, Section 106, House Rules and Precedents prohibiting such acts, rendered the bill signed into *Public Law 80-772* null and *void*.

F. Whether the District Court Orders committing Petitioners to Executive Custody pursuant to Section 3231 of the unconstitutional *Public Law 80-772* were issued *ultra vires*, are unconstitutional and *coram non judice*, and their imprisonments are unlawful.

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I. PRAYER FOR RELIEF

Petitioners request this Court to grant their Petition for writs of *habeas corpus* and declare unconstitutional and *void ab initio*: (1) *Public Law 80-772* which purported to enact Title 18, United States Code, Act of June 25, 1948, Chapter 645, 62 Stat. 683 *et seq.*, and (2) more specifically, Section 3231 thereof, 62 Stat. 826, which purported to confer upon "the district courts of the United States . . . original jurisdiction . . . of all offenses against the laws of the United States." These legislative Acts violated the Quorum, Bicameral and/or Presentment Clauses mandated respectively by Article I, § 5, Cl. 1, and Article I, § 7, Cls. 2 and 3, of the Constitution of the United States. Those federal district courts which rendered judgment and ordered commitment of each Petitioner, under Section 3231, lacked jurisdiction and, therefore, each respective judgment and commitment order is *void ab initio*. To imprison and detain each Petitioner under *void* judgments and commitment orders is unconstitutional and unlawful. As such, each Petitioner must be discharged from their present illegal incarceration immediately.

II. JURISDICTION OF THIS COURT TO ISSUE ORIGINAL WRIT

"[F]ederal court [habeas] jurisdiction is conferred by the allegation of an unconstitutional restraint" for which "[t]he jurisdictional prerequisite is . . . detention simpliciter." *Fay v. Noia*, 372 U.S. 391, 426, 430 (1963). "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it," Article I, § 9, Cl. 2, U.S. Const., which "necessarily impl[ies] judicial action." *Fay v. Noia*, 372 U.S. at 406, quoting *Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 98-99 (1868). When this clause "was written into the Federal Constitution it was settled that the writ lay to test any restraint contrary to fundamental law . . . embodied in the written Constitution." 372 U.S. at 405, 426 ("at the time . . . habeas was available to remedy any kind of governmental restraint contrary to fundamental law").

"[A]t the absolute minimum, the Suspension Clause protects the writ as it existed in 1789," *INS v. St. Cyr*, 533 U.S. 289, 301 (2001), quoting *Felkner v. Turpin*, 518 U.S. 651, 663-664 (1996), which "encompassed detentions based on errors of law, including the erroneous application or interpretation of statutes" and was available to "answer" "pure questions of law" like those raised herein. 533 U.S. at 303, 305.

This Court has explicit jurisdiction to entertain and grant writs of *habeas corpus* to address unconstitutional custody and restraint. 28 U.S.C. § 2241(a) ("Writs of habeas corpus may be granted by the Supreme Court . . . "). *See also* 28 U.S.C. § 1651(a) ("The Supreme Court . . . may issue all writs necessary or appropriate in aid of [its] jurisdiction[ ] and agreeable to the usages and principles of law."). In construing Section 14 of the 1789 Judiciary Act, now 28 U.S.C. § 1651(a), this Court recognized that an original writ of *habeas corpus* issues from the United States Supreme Court as part of its appellate jurisdiction. *Ex parte Bollman*, 8 U.S. (4 Cranch.) 75, 94-95 (1807). *Ex parte Yerger*, 75 U.S. at 98-99; *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 166 (1874) (same); *Ex parte Virginia*, 100 U.S. 339, 341-343 (1880). Thus, this Petition is properly before this Court to address the illegal restraints raised herein.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 1, commands and declares that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I, § 5, Cl. 1, commands, in relevant part, that "a Majority of each [House of Congress] shall constitute a Quorum to do Business," excepting therefrom permission to "adjourn from day to day" and "to compel Attendance of its Members, in such Manner, and under such Penalties as each House may provide."

Article I, § 7, Cl. 2, commands, in relevant part, that "[e]very Bill which shall have passed both Houses, shall,

before it becomes a Law, be presented to the President of the United States."

Article I, § 7, Cl. 3, commands, in relevant part, that "[e]very . . . Resolution . . . to which the Concurrence of the Senate and House of Representatives may be necessary . . . shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the case of a Bill."

Title 1, United States Code, Section 106, Act of July 30, 1947, Chapter 388, Title I, Ch. 2, § 106, 61 Stat. 634, Pub.L. 80-278, provides, in relevant part, that "[w]hen [a] bill . . . shall have passed both Houses, it shall be printed and shall then be called the enrolled bill . . . and shall be signed by the presiding officers of both Houses and sent to the President of the United States."

IV. STATEMENT OF FACTS

Each Petitioner has been tried, convicted, sentenced, and committed into Executive custody by order of United States District Courts acting pursuant to the grant of original jurisdiction purportedly created by *Public Law 80-772*, Title 18, United States Code, Section 3231. By virtue of the commitment orders, each Petitioner has been committed into the custody of the Attorney General (Petitioners Kahl and Bledsoe) or into the custody of the Bureau of Prisons (all other Petitioners).[1] (App. 118-181) *See* 18 U.S.C. § 4082(a) (repealed) and § 3621(a) (enacted Oct. 12, 1984, and effective Nov. 1, 1987). In respect to

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[1] Petitioner Nabors is also detained in addition to his current Judgment/Commitment Order No. 4:92CR00252-001 by a "detainer" for parole violation for a pre-November 1, 1987, offense for which the U.S. Parole Commission is acting custodian for the Attorney General. *See U.S. Parole Detainer and Judgment/Commitment Order No. LR-CR-84-51-02* (App. 137-141). *See* 18 U.S.C. §§ 4210 & 4211 (repealed Pub.L. 98-473, Title II, Ch. II, §§ 218(a)(5), 235(b)(2) and (b)(3)).

immediate custodians, Petitioners Yorie Von Kahl, Charles Bruce Nabors, Kevin Leroy McLaughlin, Warren Allen Dittrich, Tony Emery, William Anthony Johnson, Ronald Titlback, Benjamin F. Shipley, Jr., Joseph P. Ryncarz, Troy Lawrence, Sr., Jeremiah J. Kerby, Guy J. Westmoreland, James K. Vest, Darryl L. Wilson, Anthony Antoine Hartwell, and Donald W. Engelking are in the custody of R. V. Veach; Brian Edward Ratigan and Daniel Angel Rodriguez are in the custody of Frederick Menifee; Salvatore Leone is in the custody of Joe Driver; Raymond L. Bledsoe is in the custody of J. M. Wilner; Mark Anthony Clark is in the custody of John B. Fox; Larry Eugene George is in the custody of Joseph Scibana; Gary L. Settle is in the custody of Michael Garrett; and Lonnie L. Graves is in the custody of W. Elaine Chapman. The Appendix set forth in this petition identifies the immediate custodian of each Petitioner, as well as the specific case number, the Judgment and the place of confinement with respect to each Petitioner.

The text of the bill, *H.R. 3190* as amended, which became *Public Law 80-772* (enacting Title 18, United States Code, and especially Section 3231), was passed only by the Senate and never passed by the House of Representatives. Moreover, that bill was never certified as enrolled, and was surreptitiously signed by the Speaker of the House and President pro tempore of the Senate under purported authority of a concurrent resolution agreed to by a Congress denounced by President Truman as a "'body dominated by men with a dangerous lust for power and privilege,'" 27 *Encyclopedia Americana* 175 (2005), without quorums of the respective Houses sitting. Finally, that bill was mistakenly signed by the President of the United States after it was misrepresented to him by solitary Officers as a bill passed by both Houses, which was impossible since no Congress was in session.

For those reasons, *Public Law 80-772* which purportedly enacted Title 18, United States Code, Act of June 25, 1948, Chapter 645, 62 Stat. 683 *et seq.* and Section 3231 thereof, 62 Stat. 826, purporting to confer upon "the district courts of the United States . . . original jurisdiction

. . . of all offenses against the laws of the United States" violates Article I, § 5, Cl. 1, and Article I, § 7, Cls. 2 and 3, and are therefore unconstitutional and *void ab initio*. Each respective district court, which acted against each respective Petitioner, did so without jurisdiction, each judgment and commitment order is *void ab initio*, and each imprisonment thereunder is fundamentally unconstitutional and unlawful.

A. *H.R. 3190* In The First Session Of The 80th Congress

H.R. 3190 was introduced and committed to the Committee of the entire House of Representatives on the State of the Union of the First Session of the 80th Congress entitled "Crimes and Criminal Procedure." *See House Report No. 304* (April 24, 1947), p. 1 (App. 67). *See also* 94 *Cong. Rec.* D556-D557 (Daily Digest) (charting *H.R. 3190*) (App. 65-66). *H.R. 3190* differed from "five . . . bills which . . . preceded it . . . [because] it constitute[d] a revision, as well as a codification, of the Federal laws relating to crimes and criminal procedure." 93 *Cong. Rec.* 5048-5049 (May 12, 1947) (App. 45-46). The bill was intended (1) to revise and compile **all** of the criminal law, (2) to "restate[]" and "consolidate[]" "existing statutes," (3) to "repeal" "obsolete, superseded, redundant and repetitious statutes," (4) to coordinate the Criminal Code with the "Federal Rules of Criminal Procedure" formerly enacted, and (5) to "clarify and harmonize" penalties of the "many acts" passed by Congress which were found to be "almost identical." (*Id.*) "The bill was ordered to be engrossed and read a third time, was read a third time, and passed" the House on May 12, 1947, *id.*; *Journal of the House of Representatives* ("*House Journal*"), May 12, 1947, pp. 343-344 (App. 4-5); 94 *Cong. Rec.* D556-D557 (showing *H.R. 3190*'s only passage by the House of Rep. on May 12, 1947), sent to the Senate and there "referred . . . to the Committee on the Judiciary." 93 *Cong. Rec.* 5121, May 13,

1947 (App. 47); *Journal of the Senate* ("*Senate Journal*"), May 13, 1947, p. 252 (App. 10).[2]

As passed and enrolled by the House of Representatives *H.R. 3190* included at section 3231, Subtitled "District Courts," the following text:

> Offenses against the United States shall be cognizable in the district courts of the United States, but nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof.

H.R. 3190 as passed by the H. of Rep., p. 367, § 3231 (App. 110). *See United States v. Sasscer*, 558 F. Supp. 33, 34 (D.MD. 1982).

On July 27, 1947, Congress adjourned without the Senate passing *H.R. 3190*. *See* 93 *Cong. Rec.* 10439, 10522 (July 26, 1947) (App. 48-49). On November 17, 1947, Congress reconvened pursuant to a Presidential proclamation. Yet, Congress again "adjourned *sine die* on December 19, 1947," without the Senate passing *H.R. 3190*. *Kennedy v. Sampson*, 511 F.2d 430, 444 Appendix n. 4 (D.C. Cir. 1974).

B. *H.R. 3190* In Second Session Of The 80th Congress

The Senate Committee on the Judiciary reported amendments to *H.R. 3190* on June 14, 1948, under *Sen. Rep. No. 1620*. 94 *Cong. Rec.* 8075 (June 14, 1948) (App.

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[2] The Senate Journal for May 13, 1947, was approved by the Senate on May 14, 1947, *Senate Journal*, p. 259 (App. 11), and the House Journal for May 12, 1947, was approved by the House on May 13, 1947. *House Journal*, p. 346 (App. 6). The Journals of the two Houses are admissible as evidence when properly certified. 28 U.S.C. § 1736. *See also House Doc. No. 355*, 59th Cong., 2nd Sess., *Hinds' Precedents of the House of Representatives*, § 2810, p. 34 (G.P.O. 1907) ("Certified extracts of the Journal are admitted as evidence in the courts of the United States.") (App. 85). *Cf.* Fed. R. Evid. Rule 902(5); *see* 28 U.S.C. § 2072(a) and (b).

50); *Senate Journal*, June 14, 1948, p. 452 (App. 34).[3] *Sen. Rep. No. 1620* contained "a large volume of amendments" and "the new Federal Rules of Criminal Procedure [were] keyed to the bill and [were] reflected in part II of [the new proposed] title 18." Heralding that, upon passage of the amended bill, "[u]ncertainty will be ended," the Senate wanted "the amendments adopted en bloc," including a new jurisdictional section for Title 18. 94 *Cong. Rec.* 8721 (App. 51). The report contained only the proposed amendments. *See Sen. Rep. No. 1620*, pp. 1 & 4 (App. 103-104).

"[T]he amendments were considered and agreed to en bloc" and then "ordered to be engrossed." 94 *Cong. Rec.* 8721-8722 (June 18, 1948) (App. 51-52), *Senate Journal*, June 18, 1948, p. 506 (*H.R. 3190*, "as amended," passed the Senate) (App. 37). It was moved that "the Senate insist upon its amendments" by the House (94 *Cong. Rec.* at 8722); and "[o]rdered that the Secretary request the concurrence of the House of Representatives in the amendments." *Senate Journal*, *supra*, p. 506; *House Journal*, June 18, 1948, p. 688 (App. 16).

The House received the proposed amendments. The Clerk "read the Senate amendments" collectively into the record with which the House concurred. 94 *Cong. Rec.* 8864-8865 (June 18, 1948) (App. 53-54); *House Journal*, June 18, 1948, p. 704 (the "said Senate amendments were concurred in") (App. 17). Although "[t]he House agreed to the amendments to . . . H.R. 3190," *Senate Journal*, June 18, 1948, p. 510 (App. 38), no action was taken on *H.R. 3190* as amended.[4] The *Journal of the House of Representatives* is devoid of any vote on *H.R. 3190* itself on June 18,

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[3] The Senate approved its Journal for June 14, 1948. *Senate Journal*, June 15, 1948, pp. 461-462 (App. 35-36).

[4] The House approved the Journal for June 18, 1948, *House Journal*, p. 714 (June 19, 1948, approving Journal for "legislative day of . . . June 17, 1948" – *i.e.*, calendar day of June 18, 1948) (App. 18); *id.* at p. 669 (showing Friday, June 18, 1948, as "legislative day of Thursday, June 17, 1948") (App. 15), and the Senate approved its Journal for June 18, 19 and 20, 1948. *Senate Journal*, July 26, 1948, p. 593 (App. 44).

1948, and thereafter through adjournment on June 20, 1948. Moreover, the official historical chart of *H.R. 3190* clearly shows the *only* passage by the House of Representatives occurring on May 12, 1947, and specifically references volume 93, page 5048 of the *Congressional Record* as the recorded date the House passed the bill. 94 *Cong. Rec.* D556-D557 (Daily Digest).

C. Congress Agreed By Resolution To Continue Legislative Business By A Single Officer Of Each House During Adjournment

On June 19, 1948, the House submitted and agreed to concurrent resolutions *H.Con.Res. 218* and *219* and requested concurrence by the Senate. *House Journal*, June 19, 1948, pp. 771-772 (App. 19-20); *Senate Journal*, June 18, 1948, p. 577 (App. 39). "[T]he Senate [then] passed without amendment these concurrent resolutions of the House."[5] 94 *Cong. Rec.* 9349 (App. 57). *H.Con.Res. 218* "provid[ed] adjournment of the two Houses of Congress until December 31, 1948," *id.*; *see Concurrent Resolutions,* Second Session, Eightieth Cong., *H.Con.Res. 218*, June 20, 1948, 62 Stat. 1435-1436 (App. 105-106). *H.Con.Res. 219* "authorize[ed] the signing of enrolled bills following adjournment," 94 *Cong. Rec.* 9349, specifically resolving:

> That notwithstanding the adjournment of the two Houses until December 31, 1948, the Speaker of the House of Representatives and the President pro tempore of the Senate be, and they are hereby, authorized to sign enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

See Concurrent Resolutions, supra, H.Con.Res. 219, June 20, 1948, 62 Stat. 1436.

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[5] The House sat from June 19 through June 20, 1948, adjourning at 6:56 A.M., *House Journal*, June 19, 1948, p. 775 (App. 21), and approved the Journal of the 19th. *House Journal*, July 26, 1948, pp. 792-793 (reconvention by Presidential Proclamation) (App. 28-29).

Congress adjourned on June 20, 1948, pursuant to *H.Con.Res. 218*. 94 *Cong. Rec.* 9348, 9169 (App. 56, 55); *House Journal*, June 20, 1948, p. 775; *Senate Journal*, June 20, 1948, p. 578 (App. 40). Both Houses reconvened on July 26, 1948, pursuant to a proclamation of President Truman. *Senate Journal*, July 26, 1948, p. 593 (showing reconvention); *House Journal*, July 26, 1948, pp. 792-793 (same).[6]

D. Post-Adjournment Signing Of *H.R. 3190* By Single Officers Of The Houses And Presentment To And Approval Thereof By The President Pursuant To *H.Con.Res. 219*

With both Houses adjourned, with no quorum, disassembled and dispersed, Mr. LeCompte, the Chairman of the Committee on House Administration reported that that committee had found *H.R. 3190* "truly enrolled." *House Journal*, legislative day of June 19, 1948, p. 776 (recorded under heading "BILLS AND JOINT RESOLUTIONS ENROLLED SUBSEQUENT TO ADJOURNMENT") (App. 22).[7] He attached his certificate of enrollment to the **original** *H.R. 3190* passed by the House on May 12, 1947. *See H.R. 3190, certified after adjournment as "truly enrolled"* (as certified by Richard H. Hunt, Director, Center for Legislative Archives, The National Archives, Washington, D.C.) (App. 107-113). Although never certified as truly enrolled, the Speaker and President pro tempore respectively signed the Senate's amended *H.R. 3190* on June 22 and 23, 1948. 94 *Cong. Rec.* 9353-9354 (App. 58-59); *House Journal*, legislative day June 19, 1948, p. 777 (App. 23); *Senate Journal*,

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[6] The House Journal for July 26, 1948, was approved, *House Journal*, July 27, 1948, p. 797 (App. 30), and the Senate Journal for July 26, 1948, was approved. *Senate Journal*, July 27, 1948, p. 593 (App. 44).

[7] Mr. LeCompte's announcement was reported upon reconvention by the President's Proclamation on July 26, 1948. 94 *Cong. Rec.* 9363 (App. 60).

legislative day June 18, 1948, pp. 578-579 (App. 40-41). *National Archives & Records Adm. Cert., H.R. 3190 signed by House and Senate officers and President Truman* (App. 114-117). The Senate's amended *H.R. 3190* was then presented by the Committee on House Administration to President Truman, on June 23, 1948, who signed it on June 25, 1948[8], at 12:23 P.M. E.D.T., 94 *Cong. Rec.* 9364-9367 (App. 61-64); *House Journal*, legislative day of June 19, 1948, pp. 778, 780-782 (App. 24, 25-27); *Senate Journal*, legislative day of June 18, 1948, pp. 579, 583 (App. 41, 43). National Archives & Records Adm. Cert., *H.R. 3190, supra*; 94 *Cong. Rec.* D557 (Daily Digest).

E. The Signatories Of *H.R. 3190* Knew the Enacting Clause Was False When Signed

Public Law 80-772 stated that the enactment proceeded "by the Senate and House of Representatives of the United States of America *in Congress assembled*." *See* National Archives & Records Adm. Cert., *H.R. 3190* as signed into *P.L. 80-772, supra*. Each signatory knew that neither "House" legislatively existed at that time, and that the legislative process had ceased within the terms of Article I, Sections 5 and 7 on June 20, 1948.

V. REASONS FOR GRANTING THE WRITS

A. Exceptional Circumstances For Not Making Application To The Respective District Courts

This case potentially affects tens of thousands of federal prisoners by challenging the district courts' jurisdiction to adjudicate *every* federal criminal offense coming

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[8] That same day President Truman signed into law Public Law 80-773 enacting into positive law Title 28, United States Code. Act of June 25, 1948, Ch. 646, § 1, 62 Stat. 869. That Act positively repealed the former criminal jurisdiction granted to the district courts. *id.*, § 39 *et seq.*, 62 Stat. 991 *et seq.* (positive repeal listing former 28 U.S.C. § 41, ¶ 2 in schedule of repealed statutes).

before them pursuant to 18 U.S.C. § 3231. The effects will reach matters of national and international concern involving the integrity of the legislative and judicial branches. Finally, federal district court judges have a potential conflict of interest precluding them from hearing the claims presented by 28 U.S.C. § 455 and Due Process of Law.

Although not "political questions" in themselves and resolvable by the federal courts, *INS v. Chadha*, 462 U.S. 919, 940-943 (1983), they carry "significant political overtones" or "political implications" upon "'which depend public and private interests of vast magnitude.'" *Id.*, 462 U.S. at 942 and 943 (citing *Marbury v. Madison*, 5 U.S. (1 Cranch.) 137 (1803) and, quoting *Marshall Field & Co. v. Clark*, 143 U.S. 649, 669-670 (1892)).

This Court has discretion to hear this petition in the first instance. *See* 28 U.S.C. § 2241(b). *See, e.g., Ex parte Abernathy*, 320 U.S. 219 (1943) (Per Curiam). Although such discretion is "sparingly" exercised, Sup. Ct. Rule 20.1, this case presents factors which compel exercise of this discretion: namely, the interests involved; the significant impact of the issues; and the preservation of the integrity of the Judicial Branch of government. *See Sunal v. Large*, 332 U.S. 174, 178-180 (1947) (exemplifying "exceptional circumstances"); *Ex parte Grossman*, 267 U.S. 87, 108, 121 (1925) (determining scope of President's pardon power presents "[e]xceptional case[]"); *New York v. Eno*, 155 U.S. 89, 93-97 (1894) (explaining "exceptions" as "case of urgency, involving the authority and operation of the government"). *See also Ex parte Hudgings*, 249 U.S. 378, 379-380 (1919) ("exception" standard to general rule prohibiting by-passing "other available sources of judicial power" and to determine if the case is "of such exceptional character" depends "upon an analysis of the merits"); *United States ex rel. Norris v. Swope*, ___ U.S. ___, 96 L.Ed. 1381, 1382 (1952) (Justice Douglas in chambers).

1. THE CONSTITUTIONALITY OF *PUBLIC LAW 80-772* AFFECTS ALL FEDERAL CRIMINAL CASES SINCE 1948

Petitioners are challenging *Public Law 80-772*, Act of June 25, 1948, Ch. 645, Section 1, 62 Stat. 683 *et seq.* on numerous constitutional grounds. Potentially *at least* tens of thousands of current federal prisoners will be affected – a number exponentially enlarged respecting such prosecutions since 1948. This matter directly affects their family members, business endeavors, fines and forfeitures realistically involving millions of people and billions of dollars. Collateral effects, *e.g.*, loss of rights to vote, to sit on juries, consortium, to raise families, to travel, to reputation – and for those prisoners executed, pending execution or subject to executable offenses – the right to life, are also involved. This alone *by far* exceeds the "exceptional circumstances" of *any* habeas petition originally heard by this Court. However, additional exceptional circumstances exist.

2. CITIZENS OR SUBJECTS OF FOREIGN NATIONS AND INTERNATIONAL AFFAIRS WILL BE AFFECTED BY THE OUTCOME OF THIS CASE

Foreign nations have turned their citizens, subjects, or denizens over to the United States *via* extradition treaties for trial in United States district courts pursuant to 18 U.S.C. § 3231. Thus, the rights of those prisoners and collateral effects must be presumed. Finally, the dignity of the United States, foreign nations, and international relations will potentially be affected by the outcome of this case. ***Only this Court*** can provide the assurance necessary to the awesome interests involved in these circumstances.

3. POTENTIAL INTERESTS OF DISTRICT JUDGES IN THE OUTCOME OF THE INSTANT CLAIMS PROHIBITING THEIR HEARING THESE PETITIONS PURSUANT TO 28 U.S.C. § 455 AND DUE PROCESS OF LAW AND REQUIRING UNDER THE RULE OF NECESSITY THAT THIS COURT PROCEED TO DO SO

Federal Courts are courts of limited jurisdiction, *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), and a ruling that *Public Law 80-772* is unconstitutional will arguably render every federal district court judge civilly liable for every exercise of jurisdiction pursuant to 18 U.S.C. § 3231. *See Stump v. Sparkman*, 435 U.S. 349, 358-359 (1978). Judges of courts of limited jurisdiction have been held civilly liable upon void jurisdiction. Even Supreme Court Justices arguably have the same potential conflict, but for the reasons stated below must be excepted from the prohibitions of 28 U.S.C. § 455 and Due Process of Law.

"[T]he sensitivity of the issues" requires "address[ing] the applicability of [28 U.S.C.] § 455 with the same degree of care and attention . . . employ[ed] [upon an] assert[ion] that the District Court[s] lacked jurisdiction or that § 455 mandates disqualification of all [district] judges . . . without exception." *United States v. Will*, 449 U.S. 200, 217 (1980) (brackets supplying immediate circumstances). The purpose "of § 455 is to guarantee litigants a fair forum," *Id.*, "to promote public confidence in the integrity of the judicial process," *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988) (citing S. Rep. No. 93-417, p. 5 (1973); H.R. Rep. No. 93-1453, p. 5 (1973)), and to provide "positive disqualification by reason of . . . the appearance of possible bias." *Will*, 449 U.S. at 216; *Liteky v. United States*, 510 U.S. 540, 553 n. 2 (1994) (same); *Liljeberg*, 486 U.S. at 859-860 & n. 8 (same).

"[A]rgu[ably] . . . a [district] judge will feel the motivation to vindicate a prior conclusion," *Liteky*, 510 U.S. at

562, thereby creating an appearance of impropriety due to partiality. The "integrity of a fellow member," 486 U.S. at 865-866 n. 12, of a district court hearing these claims "is unlikely to quell the concerns of the public," *id.*, and such "suspicions and doubts" shadow these proceedings. *Liljeberg*, 486 U.S. 865-866 & n. 12. "People . . . are too often all too willing to indulge suspicions and doubts concerning the integrity of judges." *Id.*

Due process of law "demarks the outer boundaries of judicial disqualifications," *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986), requiring fairness in fact and "'the appearance of justice.'" *In re Murchison*, 349 U.S. 133, 136 (1955) (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)). This Court is "not required to decide whether in fact" all district judges suffer such conflict, "but only whether sitting on the case . . . '"would offer a possible temptation to the average . . . [district] judge to . . . lead him not to hold the balance nice, clear and true."'" *Aetna*, 475 U.S. at 825 (citations omitted). To permit district court judges to hear these petitions would be "a plain violation of the statute [§ 455]," *Liljeberg*, 486 U.S. at 861, and could never "'satisfy the appearance of justice.'" *Murchison*, 349 at 146. At a minimum, it would raise constitutional questions which should be avoided. *See, e.g., Richardson v. United States*, 526 U.S. 813, 830 (1999); *Gomez v. United States*, 490 U.S. 858, 864 (1989).

"Although it is clear that the District Judge[s] and all Justices of this Court have a[] [probable] interest in the outcome in [this] case[], there is no doubt whatever as to this Court's jurisdiction or that of the District Courts under 28 U.S.C. § [2241 (a)]." *Will*, 449 U.S. at 210-211 (bracketing jurisdictional statute in this case).[9] Unlike the parties in *Will*, Petitioners insist the district courts be disqualified to hear these petitions. *Id. Will* held the "Rule

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[9] The cause in *Will* was brought pursuant to 28 U.S.C. § 1346(a)(2), which unlike § 2241(a) *only* permits original jurisdiction in the District Courts. In contrast, this Court has full jurisdiction to proceed in the first instance to hear these petitions.

of Necessity" required the District Judge and the Justices to hear the case regardless of interests as no substitute district judge was available. 449 U.S. at 212.

The Justices of the Supreme Court are furthest from the operation of Section 3231 and have no peer pressures. Thus, "'[t]he biasing influence ... [is] too remote and insubstantial to violate constitutional constraints.'" *Aetna*, 475 U.S. at 826 (quoting *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980)). *Cf. Tumey v. Ohio*, 273 U.S. 510, 531 (1927) (citing Cooley, Const. Limitations 594 (7th ed. 1903)) (qualifying remoteness of interest). The Supreme Court Justices can not realistically be held liable by private parties, if, for no other reason, because this Court is essential to the tripartite Government established by Article III of the Constitution, whereas, district courts are created at Congress' discretion. Whether district judges will ultimately be held liable must await its own day in court. It suffices that they could be. *See, e.g., Bradley v. Fisher*, 80 U.S. 335 (1872).

The "Rule of Necessity" requires some court hear these constitutional challenges. *Will, supra*. Another aspect of that Rule requires in a case of choice selection of the "lesser of two evils." *United States v. Bailey*, 444 U.S. 394, 410 (1980) (construing Rule "in the context of a prison escape"). Under these exceptional circumstances, this Court should proceed promptly to hear these petitions and to resolve with speed and finality the significant questions herein.

B. *Public Law 80-772* Is Unconstitutional And *Void* Because *H.R. 3190* Never Passed Both Houses As Required By Article I, Section 7, Clause 2

1. THE LEGAL PRINCIPLES

This case presents the "profoundly important issue,"[10] of the constitutionality of an act of Congress[11] – matters

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[10] *Clinton v. City of New York*, 524 U.S. 417, 439 (1998).

"'of such public importance as to justify deviation from normal appellate practice and to require immediate determination by this Court.'" *Clinton*, 524 U.S. at 455 (Scalia, J., and O'Conner, J., joining in part and dissenting in part) (adopting language directly from Sup. Ct. R. 11).[12]

Although "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives," (Art. I, § 1, U.S. Constitution), "when [Congress] exercises its legislative power, it must follow the 'single, finely wrought and exhaustively considered procedures' specified in Article I." *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 274 (1991) (quoting *INS v. Chadha*, 462 U.S. at 951). Article I establishes "just how those powers are to be exercised." *INS v. Chadha*, 462 U.S. at 945.

An act of Congress "does ***not*** become a law unless it follows each and every procedural step chartered in Article I, § 7, cl. 2, of the Constitution." *Landgraf v. USI Film Products*, 511 U.S. 244, 263 (1994) (citing *INS v. Chadha*, 462 U.S. at 946-951 (emphasis added)); *Clinton*, 524 U.S. at 448 (noting requisite "steps" taken before bill may "'become a law'" and holding that a procedurally defective enactment cannot "'become a law' pursuant to the procedures designed by the Framers of Article I, § 7, of the Constitution").

The Constitution requires "three procedural steps": (1) a bill containing its ***exact text*** was approved by a majority

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[11] *INS v. Chadha*, 462 U.S. 919, 929 (1983).

[12] *Clinton*, 524 U.S. at 447, "twice had full argument and briefing," as did *INS v. Chadha*, 462 U.S. at 943-944 ("The important issues have been fully briefed and twice argued.") "[T]he importance of the question," *Metropolitan Washington Airports Authority v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 263 (1991), has always been noted. *Wright v. United States*, 302 U.S. 583, 586 (1938) ("the importance of the question"); *Pocket Veto Case*, 279 U.S. 655, 673 (1929) ("the public importance of the question presented"); *Missouri Pacific Railway Co. v. Kansas*, 248 U.S. 276, 279 (1919) ("the importance of the subject").

of the Members of the House of Representatives; (2) the Senate approved ***precisely the same text***; and (3) ***that text*** was signed into law by the President. "If one paragraph of ***that text*** had been omitted at ***any one of those three stages***, [the] law [in question] would ***not*** have been validly enacted."[13] *Clinton*, 524 U.S. at 448 (emphasis added). Between the second and third "procedural steps," the bill " . . . shall . . . be presented to the President . . . " Article I, § 7, Cl. 2.

The text of *H.R. 3190* passed by the House of Representatives was the text as it existed on the date of passage – *i.e.*, May 12, 1947. Whereas, the text of the bill passed by the Senate on June 18, 1948, was *H.R. 3190* "as amended." *Senate Journal*, June 18, 1948, p. 506. Thus, the text of the bills passed by the respective Houses was grossly different and neither bill ever "became a law." *Clinton*, 524 U.S. at 448.

C. Permitting Post-Adjournment Legislative Business Pursuant To *H.Con.Res. 219* Violated The Quorum, Bicameral And Presentment Requirements Of Article I Of The Constitution

After Congress adjourned on June 20, 1948, pursuant to *H.Con.Res. 219*, a single officer of each House of Congress signed *a bill* purporting to be *H.R. 3190* on June 22-23, 1948,

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[13] "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Art. I, § 1 of the Constitution.

" . . . [A] Majority of each [House] shall constitute a Quorum to do Business . . . " Art. I, § 5, Cl. 1.

"Every Bill which shall have passed [both Houses], shall, before it becomes a Law, be presented to the President of the United States; If he approves he shall sign it . . . " Art. I, § 7, Cl. 2.

"Every . . . Resolution . . . to which the Concurrence of [both Houses] may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him . . . " Art. I, § 7, Cl. 3.

94 *Cong. Rec.* 9354; *House Journal*, legislative day of June 19, 1948, p. 777; *Senate Journal*, legislative day of June 18, 1948, pp. 578-579, and presented *that bill* to the President, who signed it on June 25, 1948. 94 *Cong. Rec.* 9365-9367. Thus, the post-adjournment signature "provision [of *H.Con.Res. 219*] was an important part of the legislative scheme," leading to the enactment of *Public Law 80-772*, without which it would never have "become a Law." *Bowsher v. Synar*, 478 U.S. 714, 728 (1986). *Public Law 80-772* ***falsely*** stated it was "enacted" while both Houses were "in Congress assembled," when in fact Congress was not in session. *See* National Archives & Records Adm. Cert., *H.R. 3190* as signed into *P.L. 80-772*.

The bill signed was the Senate's amended *H.R. 3190* – a bill never certified as "truly enrolled," *compare Pub.L. 80-772*, Enactment Clause & signature pages *with H.R. 3190*, certified as "truly enrolled," *supra*, and *H.Con.Res. 219* never authorized the signing of *unenrolled* bills after adjournment. *See H.Con.Res. 219*, *supra*, 62 Stat. 1436.

Article I, § 5, Clause 1 mandates a quorum of both Houses of Congress "to do Business." This constitutional requirement has been enforced by practice, Rules of the Houses, custom, Supreme Court holdings and duly enacted statutes.

1 U.S.C. § 101 requires every "enacting clause of all Acts of Congress" to state: "'Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.'" Although the bill after passage by "both Houses" must be "enrolled" following which it "shall be signed by the presiding officers of both Houses and sent to the President of the United States,"[14] 1 U.S.C. § 106, the actual procedure is regulated by House rules and established practice. Following passage the "chairman of the Committee on House Administration . . .

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[14] 1 U.S.C. § 106 contains an exception for enrollment "[d]uring the last six days of a session," but no exception for enrolling, signing or presenting a bill to the President otherwise than during the sitting of both Houses.

affixes to the bills examined a certificate that the bill has been found truly enrolled,"[15] *House Doc. No. 769*, *supra*, Stages of a Bill, § 983, No. 16, p. [483] (App. 79), after which the "enrolled bill is first laid before the House of Representatives and signed by the Speaker . . . after which it is transmitted to the Senate and signed by the President of that body." *Id.*, No. 17, p. [484][16] (App. 80).

The Supreme Court in *Marshall Field & Co. v. Clark*, 143 U.S. 649 (1892), defined the essence of this procedure:

> ***The signing*** by the Speaker of the House of Representatives, and, by the President of the Senate, ***in open session, of an enrolled bill is an official attestation by the two houses*** of such bill as one that has passed Congress. It is ***a declaration by the two houses***, through their presiding officers, ***to the President***, that a bill, thus attested, has received, in due form, ***the sanction of the legislative branch*** of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him.

143 U.S. at 672 (emphasis added). 1 U.S.C. § 106 codified this implicit constitutional requirement. Reading 1 U.S.C. §§ 101 and 106 together requires that all acts must occur

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[15] Formerly, the "chairman of the Committee on Enrolled Bills" performed this critical task in the legislative business of enacting a bill, which has always required the enrolled bill to be "placed before the House and signed by the Speaker." *See House Doc. No. 355*, 59th Cong., 2nd Sess., *Hinds' Precedents of the House of Representatives*, Ch. XCI, § 3429, notes 3 & 5, p. 311 (G.P.O. 1907) (App. 92). *See House Doc. No. 769*, *supra*, Preface, p. [VI] ("The rulings of the Speakers of the House and of the Chairman of the Committee of the Whole are to the rules of the House what the decisions of the courts are to the statutes . . . [which are] embodied in the monumental work[s] of *Hinds* and *Canon*.") (App. 71).

[16] The Supreme Court not only takes judicial notice of the legislative history of a bill, *Alaska v. American Can Co.*, 358 U.S. 224, 226-227 (1959), but will both judicially notice and "h[o]ld" Congress and its legislative committees "to observance of its rules." *Yellin v. United States*, 374 U.S. 109, 114 (1963).

at least through presentment to the President while Congress is in session. That the enrolled bill must be "layed before the House" prior to signing by the Speaker and *then* "transmitted to the Senate" before the signing by the President of that body concludes that the respective Houses *must be in session during this transaction.*[17]

An "adjournment terminates the legislative existence of Congress." *Pocket Veto Case*, 279 U.S. at 681. "'Th[e] expression, a "house," or "each house," [when] employed . . . with reference to the faculties and powers of the two chambers . . . always means . . . the constitutional quorum, assembled for the transaction of business, and capable of transacting business.'" 279 U.S. at 683, quoting I *Curtis' Constitutional History of the United States*, 486 n. 1. Moreover, the term "'House'" means "the House in session," 279 U.S. at 682, and "'as organized and entitled to exert legislative power,' that is, the legislative bodies 'organized conformably to law for the purpose of enacting legislation.'" *Id.* (quoting *Missouri Pacific Railway Co. v. Kansas*, 248 U.S. 276, 281 (1919)). *See also House Doc. No. 355, supra, Hinds' Precedents*, § 2939, p. 87 ("'The House is not a House without a quorum'") (App. 87).

No "attestation" or "declaration **by the two houses** . . . to the President," *Field & Co.*, 143 U.S. at 672, that *H.R. 3190* had "passed" Congress during the adjournment was possible because no such "houses" constitutionally existed. *See also United States National Bank of Oregon v. Independent Insurance Agents of America*, 508 U.S. 439, 455 n. 7 (1993) (noting that the rule established in *Field & Co.*, 143 U.S. at 672, made statutory by 1 U.S.C. § 106 turned upon "the 'enrolled bill,' signed in open session by

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[17] "[T]he Constitution has left it to Congress to determine how a bill is to be authenticated as having passed" and "the courts accept as passed all bills authenticated in the manner provided by Congress." *United States v. Munoz-Flores*, 495 U.S. 385, 391 n. 4 (1990) (citing *Field & Co. v. Clark*, 143 U.S. 649 (1892), in which case the Court established the so-called "enrolled bill rule" – a rule not applicable in this case, but a *ruling* that supports Petitioners' claims.)

the Speaker of the House of Representatives and the President of the Senate"). Longstanding precedence of the House affirms this. *House Doc. No. 355, supra, Hinds' Precedents, Vol. IV*, § 2951, pp. 90-91 (upon "disclos[ure] . . . that there is not a quorum . . . , [t]he House thereby becomes **constitutionally disqualified** to do further business") (excepting from disqualification the exceptions stated in Art. I, § 5, Cl. 1) (emphasis added) (App. 88-89); *id.*, § 3458, p. 322 ("The Speaker may not sign an enrolled bill in the absence of a quorum.") (App. 93); *id.* at § 3486, pp. 332-333 (recognizing enrollment and presentment to the President to be legislative business required to be completed before adjournment) (App. 95-96); *id.* at § 3487, p. 333 n. 3 (presentment to the President is legislative "business" which must be completed before adjournment) (App. 96); *id.* at § 4788, p. 1026 ("The presentation of enrolled bills" to the President of the United States is a "transact[ion]" of "business" of the "House.") (App. 100).

Once a bill has passed the House of Representatives it must be printed as an "engrossed bill" which then "shall be signed by the Clerk of the House . . . sent to the other House, and in that form shall be dealt with by that House and its officers, and, if passed, returned signed by said Clerk." 1 U.S.C. § 106. In the immediate case *H.R. 3190* was passed by the House of Representatives on May 12, 1947, engrossed and sent to the Senate and there referred to the Senate's Committee on the Judiciary. *See* 93 *Cong. Rec.* 5048-5049, 5121; *Senate Journal*, May 13, 1947, p. 252. However, it was not dealt with nor passed "in that form."

Instead, amendments were proposed which were "agreed to en bloc," read into the record and "ordered to be engrossed," 94 *Cong. Rec.* 8721-8722. Then, "the [amended] bill was read the third time and passed." 94 *Cong. Rec.* 8722; *Senate Journal*, June 18, 1948, p. 506. The House then concurred in the amendments en bloc. 94 *Cong. Rec.* 8864-8865; *House Journal*, June 18, 1948, p. 704.[18]

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[18] This contravenes the procedures of the House of Representatives for the 80th Congress. "When a bill with Senate amendments comes

(Continued on following page)

"The House in which a bill originates enrolls it," *House Doc. No. 769*, *supra*, Stages of a Bill, No. 15, p. [483] (App. 79), and, in the case of House bills, the "chairman of the Committee on House Administration . . . affixes to the bills examined a certificate that the bill has been found truly enrolled," *id.*, No. 16, p. [483], after which it is "laid before the House . . . signed by the Speaker [then] transmitted to the Senate and signed by the President of that body." *Id.*, No. 17, p. [484]. Unequivocally, "[t]he Speaker may not sign an enrolled bill in the absence of a quorum." *House Doc. No. 355*, *supra*, *Hinds' Precedents*, § 3458, p. 322. *Cf.*, *id.*, § 2939, p. 87 ("The House is not a House without a quorum.").

The constitutional "quorum" issue is precluded from the *Field & Co.'s* "enrolled bill rule" by its terms – *i.e.*, "[t]he signing . . . **in open session**, of an enrolled bill," 143 U.S. at 672 (emphasis added), which in any case only applies in "the absence of [a] constitutional requirement binding Congress." *United States v. Munoz-Flores*, *supra*, 495 U.S. at 391 n. 4. Moreover, just as "§ 7 gives effect to **all** of its Clauses in determining what procedures the Legislative and Executive branches must follow to enact a law," *id.*, 495 U.S. 386 (emphasis by Court), so too does Article I, § 5, Cl. 1 "provid[e] that no law could take effect without the concurrence of the prescribed majority of the Members of both Houses," *INS v. Chadha*, 462 U.S. at 949-950, as to **all** legislative "Business." *Cf. United States v. Ballin*, 144 U.S. 1, 3-5 (1892) (to determine whether constitutionally mandated quorum was present for legislative action the Court "assume[s]" the Journals of the Houses are to be considered to decide the issue).

The bill signed by the Officers of the Houses presented to and signed by the President of the United States was the Senate's amended bill, which never passed the House. *H.Con.Res. 219* only "authorized [the] sign[ing] [of] enrolled bills . . . duly passed by the two Houses and found

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before the House, the House takes up each amendment by itself. . . . " *House Doc. No. 769*, Stages of a Bill in the House, § 983, No. 13, p. [483].

truly enrolled," *H.Con.Res. 219*, *supra*, 62 Stat. 1436, voiding the signatures on the amended bill.[19]

Having not been enrolled, certified as truly enrolled, or signed by the Speaker of the House with a quorum present, the bill was rendered constitutionally void. *House Doc. No. 769*, *supra*, Constitution of the United States, § 55, p. [19] ("[w]hen action requiring a quorum was taken in the ascertained absence of a quorum . . . the action was null and void") (App. 74); *House Doc. No. 355*, *supra*, *Hinds' Precedents*, §§ 3497 & 3498, pp. 344-345 (such a bill is "not in force" and is "not a valid statute") (App. 97-98). *Cf.*, *id.*, *Hinds' Precedents*, § 2962, p. 94 (to vacate legislative act "the absence of a quorum should appear from the Journal") (App. 90).

Art. I, § 7, mandates that a bill that has passed both Houses "'shall before it becomes a Law, be presented to the President of the United States . . . ,'" Art. I, § 7, Cl. 2; *INS v. Chadha*, 462 U.S. at 945, which "can **only** contemplate a presentment by the Congress in some manner, [because] . . . [a]t that point the bill is necessarily in the hands of the Congress." *United States v. Kapsalis*, 214 F.2d 677, 680 (7th Cir. 1954), *cert. denied*, 349 U.S. 906 (1955) (emphasis added). Thus, presentment is clearly part of the legislative procedure required as essential to enactment of a bill as law. *INS v. Chadha*, 462 U.S. at 945, 947, 951; *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 454

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[19] On July 26, 1948, "Mr. LeCompte, from the Committee on House Administration, reported that that committee had examined and found" that *H.R. 3190* had been "truly enrolled." 94 *Cong. Rec.* 9363. The version of *H.R. 3190* certified as "truly enrolled" by Mr. LeCompte, is the House version passed on May 12, 1947, with the text of the original § 3231 – the text of which was never passed by the Senate – to which his certificate of enrollment is attached. (App. 107-113). The statutory mandate after final passage and printing to "call[ ]" the bill in such final form "the enrolled bill," 1 U.S.C. § 106, Act of July 30, 1947, Ch. 388, Ch. 2, 61 Stat. 634, is determined by the certificate "affixe[d] to the bill," *House Doc. No. 769*, Stages of a Bill, *supra*, No. 16, all of which is required ***before*** the "sign[ing] by the presiding officers of both Houses and sen[ding] to the President of the United States." 1 U.S.C. § 106.

(1899) ("***After a bill has been presented*** to the President, ***no further action is required by Congress*** in respect of that bill, unless it be disapproved by him. . . .") (emphasis added). *See House Doc. No. 355*, *supra*, *Hinds' Precedents*, Vol. IV, § 4788, p. 1026 (recognizing that "the presentation of enrolled bills" to the President is a "transact[ion]" of "business" of "the House"); *id.*, § 3486, p. 332 (recognizing presentment required prior to adjournment); *id.*, § 3487, p. 333 note 3 (when bill is enrolled or signed by presiding officers "too late to be presented to the President before adjournment" signing and presentment must continue at next session as a "resumption of [legislative] business"). Clearly presentment is part of the constitutionally mandated "Business," Art. I, § 5, Cl. 1, to be "exercised in accord with [the] single, finely wrought and exhaustively considered, procedure" "prescri[bed] . . . in Art. I, §§ 1, 7." *INS v. Chadha*, 462 U.S. at 951.

The "draftsmen" of the Constitution "took special pains to assure these [legislative] requirements could not be circumvented. During the final debates on Art. I, § 7, Cl. 2, James Madison expressed concern that it might easily be evaded by the simple expedient of calling a proposal a 'resolution' or 'vote' rather than a 'bill.' As a consequence, Art. I, § 7, Cl. 3, . . . was added." *INS v. Chadha*, 462 U.S. at 947 (citing 2 Farrand, *supra*, 301-302, 304-305).

Whether actions authorized under a resolution are "an exercise of legislative powers depends not on their form but upon 'whether they contain matter which is properly to be regarded as legislative in its character and effect.'" *INS v. Chadha*, 462 U.S. at 952 (quoting S. Rep. No. 1335, 54th Cong., 2d Sess., 8 (1897)). "If the power is legislative, Congress must exercise it in conformity with the bicameralism and presentment requirements of Art. I, § 7." *Metropolitan*, 501 U.S. at 276. *See also Bowsher v. Synar*, 478 U.S. at 756 (Stevens, J., concurring) ("It is settled, however, that if a resolution is intended to make policy that will bind the Nation, and thus is 'legislative in its character and effect,' S. Rep. No. 1335, 54th Cong., 2d Sess., 8 (1897) – then the full Article I requirements must

be observed. For 'the nature or substance of the resolution, and not its form, controls the question of its disposition.' Ibid.").

"'Congress,'" of course, "'cannot grant to an officer under its control what it does not possess.'" *Metropolitan*, 501 U.S. at 275 (quoting *Bowsher v. Synar*, 478 U.S. at 726). Congress does not possess the "'capab[ility] of transacting business'" and is not "'entitled to exert legislative power,'" when its "legislative existence" has been "terminate[d]" by an "adjournment." *Pocket Veto Case*, 279 U.S. at 681-683 (citations omitted). "The limitation of the power of less than a quorum is absolute," *House Doc. No. 355*, *supra*, *Hinds' Precedents*, Vol. V, Ch. CXL, § 6686, p. 851 (App. 102), and includes the signing of an enrolled bill by the Speaker of the House, *id.*, Vol. IV, Ch. XCI, § 3458, p. 322, and presentment to the President of the United States. *id.*, Ch. XCII, §§ 3486, 3487 & 3497, pp. 332, 333 note 3, 344 & 345 (App. 95-98). *Wright v. United States*, 302 U.S. 583, 600 (1938) (Stone, J., concurring) ("The houses of Congress, being collective bodies, transacting their routine business by majority action are capable of acting only when in session and by formal action recorded in their respective journals, or by recognition, through such action, of an established practice.") Thus, "Congress," as defined by the Constitution and Supreme Court, never "presented" *any* version of *H.R. 3190* to the President of the United States.

Whether the action taken under *H.Con.Res. 219* was an "exercise of legislative power" depends upon whether it was essentially "legislative in purpose and effect." *INS v. Chadha*, 462 U.S. at 952. "In short, when Congress '[takes] action that ha[s] the purpose and effect of altering the legal rights, duties, and relations of persons . . . outside the Legislative Branch,' it must take that action by the procedures authorized in the Constitution." *Metropolitan*, 501 U.S. at 276, quoting *INS v. Chadha*, 462 U.S. at 952-955. "If Congress chooses to use a [] resolution . . . as a means of expediting action, it may do so, if it acts by both houses and presents the resolution to the President," *Consumer Energy Council of America v. F.E.R.C.*, 673 F.2d

425, 476 (D.C. Cir. 1982), *aff'd mem. sub nom., Process Gas Consumers Group v. Consumer Energy Council of America*, 463 U.S. 1216 (1983).

The inescapable conclusion as to the "purpose and effect" of *H.Con.Res. 219* was to enact ***a bill*** the text of which at the time of adjournment on June 20, 1948, had not been passed by both Houses, enrolled, certified as "truly enrolled," or signed by the officers of the Houses or presented to the President of the United States *with quorums sitting*. In other words, *H.Con.Res. 219* unconstitutionally permitted post-adjournment legislative business to proceed without Congress and upon an unpassed bill. Congress did not follow the procedures mandated by Art. I, § 7, Cl. 2 and attempted to supersede the quorum requirements of Art. I, § 5, Cl. 1 *via* a concurrent resolution to carry forth legislative business with no legislature. The 80th Congress surreptitiously provided a bill, the text of which had never passed either House "'mask[ed] under . . . [the] indirect measure,'" *Metropolitan*, *supra*, 501 U.S. at 277 (quoting Madison, *The Federalist No. 48*, p. 334 (J. Cooke 1961 ed.)), of a resolution purporting to authorize continuing legislative action during adjournment with no quorum and no Congress of an extra-congressional bill. *Public Law 80-772* did not "become a Law" as required by the constitutional procedures mandated under Article I, § 5, Cl. 1, and Article I, § 7, Cls. 2 and 3, and is unconstitutional and *void ab initio*.

"[W]hen action requiring a quorum was taken in the ascertained absence of a quorum . . . the action [is] null and void," *House Doc. No. 769*, *supra*, Constitution of the United States, § 55, p. [19] (citing *Hinds' Precedents*, Vol. IV, § 2964), and "a bill . . . not actually passed [although] signed by the President [is to be] disregarded [requiring] a new bill [to be] passed." *House Doc. No. 769*, § 103, p. [34] (citing *Hinds' Precedents*, Vol. IV, § 3498) (App. 75).

D. The District Court Orders Committing Petitioners To Executive Custody Pursuant To § 3231 (Of The Unconstitutional *Public Law 80-772*) Were Issued *Ultra Vires*, Are Unconstitutional And *Coram Non Judice*, And their Imprisonments Are Unlawful

"The challenge in this case goes to the subject-matter jurisdiction of the [respective district] court[s] and hence [their] power to issue the order[s]," *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988), committing Petitioners to imprisonment in Executive custody. Thus, the "question is, whether . . . [the district courts'] action is judicial or extra-judicial, with or without the authority of law to render [the] judgment[s]," *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 718 (1838), and to issue the commitment orders.

Subject-matter jurisdiction means "'the courts' statutory or constitutional *power* to adjudicate the case,'" *United States v. Cotton*, 535 U.S. 625, 630 (2002), quoting *Steel Co. v. Citizens For A Better Environment*, 523 U.S. 83, 89 (1998); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) at 718 ("Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them."); *Reynolds v. Stockton*, 140 U.S. 254, 268 (1891) ("Jurisdiction may be defined to be the right to adjudicate concerning the subject matter in a given case."). "Subject-matter limitations on federal jurisdiction serve institutional interests by keeping the federal courts within the bounds the Constitution and Congress have prescribed." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).[20]

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[20] "Federal courts are courts of limited jurisdiction . . . Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction." *Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxite de Guinea*, 456 U.S. 694, 701 (1982); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) (all lower federal courts "derive[ ] [their] jurisdiction wholly from the authority of

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"'Without jurisdiction the court cannot proceed at all in any cause . . . and when it ceases to exist, the only function of the court is that of announcing the fact and dismissing the cause.'" *Steel Co. v. Citizens*, 523 U.S. at 94, quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869); *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) ("lack of subject-matter jurisdiction . . . precludes further adjudication"). This Court has asserted over and over that "[t]he requirement that jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co.*, 523 U.S. at 94-95, quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884); *See also Insurance Corp. of Ireland, Ltd.*, 456 U.S. at 702.

Because subject-matter jurisdiction "involves a court's power to hear a case, [and thus] can never be forfeited or waived . . . correction [is mandatory] whether the error was raised in district court" or not. *United States v. Cotton*, 535 U.S. at 630 (citation omitted); *Steel Co.*, 523 U.S. at 94-95 (citing cases). When a district court did "not have subject-matter jurisdiction over the underlying action . . . [its] process[es] [are] void and an order of [punishment] based [thereupon] . . . must be reversed." *United States Catholic Conf.*, 487 U.S. at 77; *Willy v. Coastal Corp.*, 503 U.S. at 139 ("[T]he [punishment] order itself should fall with a showing that the court was without authority to enter the decree."); *Ex parte Fisk*, 113 U.S. 713, 718 (1885)

Congress"); *United States v. Hudson & Goodwin*, 11 U.S. 32, 33 (1812) (federal courts "possess no jurisdiction but what is given to them by the power that creates them."). *United States v. Hall*, 98 U.S. 343, 345 (1879) (federal "courts possess no jurisdiction over crimes and offenses . . . except what is given to them by the power that created them"); *Hudson & Goodwin*, 11 U.S. at 33-34. *See also, e.g., United States v. Wiltberger*, 18 U.S. 76, 95-105 (1820) ("the power of punishment is vested in the legislative, not the judicial department," criminal statutes are to be construed strictly, "probability" cannot serve to "enlarge a statute" and an offense not clearly within the terms of a statute precludes federal court jurisdiction).

("When . . . a court of the United States undertakes, by its process . . . to punish a man . . . [respecting] an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing . . . is equally void.")

Habeas corpus review "is limited to the examination of the jurisdiction of the court whose judgment of conviction is challenged." *INS v. St. Cyr*, 533 U.S. 289, 311-314 (2001); *Bowen v. Johnston*, 306 U.S. 19, 23 (1939). A "court 'has jurisdiction to render a particular judgment *only when the offense charged is within the class of offenses placed by the law under its jurisdiction.*'" 306 U.S. at 24 (emphasis added). If it is found that the court lacked jurisdiction to try petitioner, the judgment is *void* and the prisoner must be discharged. *Ex parte Yarbrough*, 110 U.S. 651, 654 (1884).

Petitioners have established that the text of *H.R. 3190* signed by respective House officers and the President of the United States: (1) failed to pass the House of Representatives, and (2) that the legislative process continued after Congress adjourned by single officers of each House acting pursuant to *H.Con.Res. 219* without quorums in either House, all of which violated Article I, Section 5, Clause 1; Article I, Section 7, Clause 2, and/or Article I, Section 7, Clause 3 – and any of which rendered *Public Law 80-772* unconstitutional and ***void ab initio***. *Marbury v. Madison*, 5 U.S. 137, 180 (1803) ("a law repugnant to the constitution is void; and . . . courts, as well as other departments, are bound by that instrument"). Therefore, because "the offense[s] charged . . . [were] placed by the law under [the] jurisdiction," of the respective district courts below pursuant to 18 U.S.C. § 3231 of *Public Law 80-772*, which is unconstitutional, and "void, the court was without jurisdiction and the prisoner[s] must be discharged." *Yarbrough*, 110 U.S. at 654. Since *Public Law 80-772* has never been enacted as required by Article I, Section 5, Clause 1, and Article I, Section 7, Clauses 2 and 3 thereof, rendering *void ab initio* the jurisdiction by which the respective district courts acted to convict, enter judgment, and order Petitioners imprisoned in Executive

custody, the district courts' actions were "'*ultra vires*,'" *Ruhrgas AG*, 526 U.S. at 583 (quoting *Steel Co.*, 523 U.S. at 101-102), and "*coram non judice.*" *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) at 720.

The convictions and judgments thereupon "being without jurisdiction, [are] void, and the order[s] punishing ... [are] equally void." *Ex parte Fisk*, 113 U.S. at 718; *United States Cath. Conf.*, 487 U.S. at 77; *Willy v. Coastal Corp.*, 503 U.S. at 139. This is precisely the office and function of *habeas corpus* – *i.e.*, to "examin[e] ... the jurisdiction of the court whose judgment of conviction is challenged," *Bowen v. Johnston*, 306 U.S. at 23, and where, as here, those courts were clearly "without jurisdiction ... the prisoner[s] ... must be discharged." *Ex parte Yarbrough*, 110 U.S. at 654. *See also Ex parte Lange*, 85 U.S. (18 Wall.) 163, 166 (1874).

CONCLUSION

For these reasons, Petitioners pray that the said writs of *habeas corpus* issue and that they be immediately discharged from their unlawful imprisonment.

Petitioner Yorie Von Kahl declares under penalties of perjury that the facts stated or alleged herein are true and correct pursuant to 28 U.S.C. § 1746.

Executed this 21st day of September, 2007.

Respectfully submitted,

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APPENDIX

JUDGMENTS, CUSTODIANS AND PLACES OF CONFINEMENT

Petitioner Yorie Von Kahl is in the custody of the United States Attorney General (hereafter "USAG") pursuant to a Judgment and Commitment Order (hereafter "J & C") issued in Case No. C3-83-16-03, pursuant to which he is in the immediate custody of R. V. Veach, Warden of the United States Penitentiary (hereafter "USP") at Terre Haute, Indiana. *See J & C* (App. 118). *See also* 18 U.S.C. § 4082(a).

Petitioner Brian Edward Ratigan is in the custody of the United States Bureau of Prisons (hereafter "USBOP") pursuant to a J & C issued in Case No. 2:97CR00066-001, pursuant to which he is in the immediate custody of Frederick Menifee, Warden of USP Pollock, Louisiana. *See J & C* (App. 119-121). *See also* 18 U.S.C. § 3621(a).

Petitioner Salvatore Leone is in the custody of the USBOP pursuant to a J & C issued in Case No. 1:95CR00960-001, pursuant to which he is in the immediate custody of Joe Driver, Warden of USP Hazelton, Bruceton Mills, West Virginia. *See J & C* (App. 122-123). *See also* 18 U.S.C. § 3621(a).

Petitioner Raymond L. Bledsoe is in the custody of the USAG pursuant to a J & C issued in Case No. 83-00023-01-CR-W-5, pursuant to which he is in the immediate custody of J. M. Wilner, Deputy Warden of the Federal Correctional Institution (hereafter "FCI") at Florence, Colorado. *See J & C* (App. 124). *See also* 18 U.S.C. § 4082(a).

Petitioner Daniel Angel Rodriguez is in the custody of the USBOP pursuant to a J & C issued in Case No. CR 94-402-CR-Propst, pursuant to which he is in the immediate custody of Frederick Menifee, Warden of USP Pollock, Louisiana. *See J & C* (App. 125-126). *See also* 18 U.S.C. § 3621(a).

Petitioner Mark Anthony Clark is in the custody of the USBOP pursuant to a J & C issued in Case No. 5:95-CR-0019-01-C, pursuant to which he is in the immediate custody of John B. Fox, Warden of USP Beaumont, Texas. *See J & C* (App. 127-129). *See also* 18 U.S.C. § 3621(a).

Petitioner Larry Eugene George is in the custody of the USBOP pursuant to J & Cs issued in Case Nos. 4:98-CR-046-A (1) and 4:98-CR-101-A (1), pursuant to which he is in the immediate custody of Joseph Scibana, Warden of FCI El Reno, Oklahoma. *See J & Cs* (App. 130-131). *See also* 18 U.S.C. 3621(a).

Petitioner Gary L. Settle is in the custody of the USBOP pursuant to a J & C issued in Case No. 93-12-Cr-Orl-19, pursuant to which he is in the immediate custody of Michael Garrett, Warden of the Federal Correctional Complex, USP I Coleman, Florida. *See J & C* (App. 132-133). *See also* 18 U.S.C. § 3621(a).

Petitioner Charles Bruce Nabors is in the custody of the USBOP and the USAG pursuant to J & Cs issued in Case Nos. 4:92CR00252-001 and LR-CR-84-51-02 and a parole violator warrant issued under LR-CR-84-51-02, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & Cs & Warrant Authorities* (App. 134-141). *See also* 18 U.S.C. §§ 3621(a) & 4082(a).

Petitioner Kevin Leroy McLaughlin is in the custody of the USBOP pursuant to J & Cs issued in Case Nos. 5:93CR40037-002-SAC and 95CR40050-001, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & Cs* (App. 142-143). *See also* 18 U.S.C. 3621(a).

Petitioner Warren Allen Dittrich is in the custody of the USBOP pursuant to a J & C issued in Case No. 4:95CR00068-001, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 144-145). *See also* 18 U.S.C. § 3621(a).

Petitioner Tony Emery is in the custody of the USBOP pursuant to a J & C issued in Case No. 4:97CR06004-001, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 146-147). *See also* 18 U.S.C. § 3621(a).

Petitioner William Anthony Johnson is in the custody of the USBOP pursuant to a J & C issued in Case No. 3:02CR-68-01-R, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 148-150). *See also* 18 U.S.C. § 3621(a).

Petitioner Ronald Titlbach is in the custody of the USBOP pursuant to a J & C issued in Case No. CR 00-25-1-LRR, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 151-152). *See also* 18 U.S.C. § 3621(a).

Petitioner Benjamin F. Shipley, Jr. is in the custody of the USBOP pursuant to a J & C issued in Case No. 2:97CR20005-001, pursuant to which he is in the immediate

custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 153-154). *See also* 18 U.S.C. § 3621(a).

Petitioner Joseph P. Ryncarz is in the custody of the USBOP pursuant to a J & C issued in Case No. 2:01CR00015-001, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 155-156). *See also* 18 U.S.C. § 3621(a).

Petitioner Lonnie L. Graves is in the custody of the USBOP pursuant to a J & C issued in Case No. 1:05-CR-00049-001, pursuant to which he is in the immediate custody of W. Elaine Chapman, Warden (under Warden A. F. Beeler) of FCI Medium (II) Butner, North Carolina. *See J & C* (App. 157-159). *See also* 18 U.S.C. § 3621(a).

Petitioner Troy Lawrence, Sr. is in the custody of the USBOP pursuant to a J & C issued in Case No. 02-CR-200-1, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 160-162). *See also* 18 U.S.C. § 3621(a).

Petitioner Jeremiah J. Kerby is in the custody of the USBOP pursuant to J & Cs issued in Case Nos. CR01-4013-001-DEO, and 8:02CR336, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & Cs* (App. 163-166). *See also* 18 U.S.C. 3621(a).

Petitioner Guy J. Westmoreland is in the custody of the USBOP pursuant to a J & C issued in Case No. 3:98CR30022-02-WDS, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre

Haute, Indiana. *See J & C* (App. 167-169). *See also* 18 U.S.C. § 3621(a).

Petitioner James K. Vest is in the custody of the USBOP pursuant to a J & C issued in Case No. 94-00037-04-CR-W-8, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 170-172). *See also* 18 U.S.C. § 3621(a).

Petitioner Darryl L. Wilson is in the custody of the USBOP pursuant to a J & C issued in Case No. 02 CR 895-25, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 173-176). *See also* 18 U.S.C. § 3621(a).

Petitioner Anthony Antoine Hartwell is in the custody of the USBOP pursuant to a J & C issued in Case No. CR 99-CR-50057-01-FL, pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 177-178). *See also* 18 U.S.C. § 3621(a).

Petitioner Donald W. Engelking is in the custody of the USBOP pursuant to a J & C issued in Case No. CR-5-89-0081-C(1), pursuant to which he is in the immediate custody of R. V. Veach, Warden of USP Terre Haute, Indiana. *See J & C* (App. 179-181). *See also* 18 U.S.C. § 3621(a).

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(2)

No. 07-414

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SUPREME COURT, U.S.

In the Supreme Court of the United States

In re: YORIE VON KAHL, et al.,
Petitioners.

ON PETITION FOR WRITS OF HABEAS CORPUS

PETITION FOR REHEARING

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Petitioners request that this Court grant their petition for rehearing of the Court's order denying Petitioners' Petition for Writs of Habeas Corpus. Petitioners contend that the law did not permit the Court to dispose of Petitioners' habeas corpus petition in a secret "conference," the Court's denial and the district courts' conflict of interest require Petitioners to seek relief in state courts, and/or the Court should have transferred the Petition to the district courts pursuant to 28 U.S.C. § 2241(b).

First, Petitioners contend that the Court's consideration of their Petition in secret conference was unlawful. This Court or some person within this Court's supervisory powers apparently filed, docketed and scheduled the Petition for a "conference," which was purportedly held on October 26, 2007. Thereafter, the petition was "denied." Such a practice, respecting rights, remedies and powers protected, provided, and/or prohibited by the Constitution and laws enacted pursuant thereto, renders such "conferences" in respect to the Great Writ followed by arbitrary denials constitutionally suspect.

No statute appears to authorize this Court to delay an application for a writ of habeas corpus by ordering such application to a "conference." The power to issue such writ is clear. 28 U.S.C. §§ 2241(a), 1651(a). "Secrecy and anonymity are not congenial to our traditions of procedure . . . ." *Eagles v. United States*, 329 U.S. 304, 315 (1946). In this case, someone unknown to Petitioners or the public denied rights and remedies that involve the highest possible considerations of the Judicial Branch by a "private conference" that was "confidential." Supreme Court Practice, 7th ed., Stern, Gressman,

Shapiro & Geller, 6, 7 n.22 (BNA 1993)(quoting Justice Rehnquist from Sunshine in the Third Branch, 16 Washburn L. Rev. 559, 559-60 n.1 (1977), and Justice Powell, What Really Goes On at the Supreme Court, 66 A.B.A.J. 721, 722 (1980)).

The "conference" is a practice - at least in habeas corpus cases - not sanctioned by law. In *Holiday v. Johnston*, 313 U.S. 342 (1941), this Court condemned the practice of permitting Commissioners to hear and dispose of habeas corpus petitions as clearly in violation of the statutory procedure for hearing habeas corpus petitions despite the procedure being permitted by court rules and being more convenient. *Id.* at 352-54; *see, also, Walker v. Johnston*, 312 U.S. 275, 285-87 (1941).

The instant habeas corpus petition was denied after this private and confidential conference. This petition was not filed for determination by any single Justice. The Petitioners sought issuance of the writs by the United States Supreme Court but this denial in secret conference as action of the Court apparently violates the quorum requirements and is without authority. 28 U.S.C. § 1; S.Ct.R. 4.2; *Nguyen v. United States*, 539 U.S. 69, 82-83 (2003).

Petitioners properly invoked the jurisdiction of this Court to review their commitment orders and imprisonment and fully stated the reasons for not making the application to the district court of the district in which the applicant is held. 28 U.S.C. § 2241; S.Ct.R. 20.4. Both the Constitution and law restrict and govern this Court's discretion, without which its actions are *ultra vires. Marbury v. Madison*, 5 U.S. 137, 176-180 (1803)(Constitution "establish[es] . . . limits not to be transcended by...departments" of Government and is

"instrument as a rule for the government of courts, as well as of the legislature" any act contrary to which is "void").

Congress has permitted this Court or any justice thereof (when application is made thereto) to "decline to entertain an application for a writ of habeas corpus **and** [to] transfer the application for hearing and determination to the district court having jurisdiction to entertain it."[1] 28 U.S.C. § 2241(b). Petitioners complied fully with the requirements of 28 U.S.C. § 2242, and asserted numerous extraordinary circumstances establishing overwhelming reasons for not applying to any district court in the first instance. The reasons included effects upon tens of thousands of federal prisoners (if not far more), potentially millions of people, foreign citizens and international relations with the United States, and at least a publicly perceived (if not actual) conflict of interest in district court judges, precluding them from hearing the claims as a matter of law (28 U.S.C. § 455(a)), and by constitutional constraint. *See, e.g., Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986); *In re Murchison*, 349 U.S. 133, 136 (1955).

The conflict of interest matter is so devastating in light of Petitioners' claims, which at this time "must be accepted as true," [2] that every federal criminal proceeding now underway is without jurisdiction in the respective district courts. No habeas corpus case before this Court has ever been

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[1] If this Court determines that the district courts do not have a conflict of interest, then Petitioners' application should be transferred to the district courts with jurisdiction, instead of simply denying the writs.

[2] *Reynolds v. Cochran*, 365 U.S. 525, 528 (1961); *Hawk v. Olsen*, 326 U.S. 271, 273 (1945)

more urgent to the national and international interests of the United States.

Under the facts alleged, it is virtually impossible that "an adequate remedy may be had in a lower court." *Ex parte Abernathy*, 320 U.S. 219, 220 (1943). Compelling district judges to hear the application in light of the clear conflict of interest would not merely preclude "an adequate remedy" in the district courts, *Abernathy*, 320 U.S. at 20; it would turn any such remedy into an unconstitutional proceeding. *See Aetna*, 475 U.S., at 828; *Murchison*, 349 U.S. at 136. "Good judicial administration is not furthered by insistence on futile procedure." *Wade v. Mayo*, 334 U.S. 672, 681 (1948); *Nguyen*, 539 U.S. at 78. *Cf. Wilwording v. Swenson*, 404 U.S. 249, 251-51 (1971)(per curiam)("The exhaustion-of-state-remedies rule should not be stretched to the absurdity of requiring the exhaustion of . . . separate remedies when at the outset a petitioner cannot intelligently select the proper way, and in conclusion he may find that none of the [alternatives] is appropriate or effective.")(quoting *Marino v. Ragen*, 332 U.S. 561, 568 (1947)); *Boumediene v. Bush*, __U.S , ___, 127 S.Ct. 1478, 167 L.Ed 2d 578, 580 (April 7, 2007)(Breyer, J., dissenting). Finally, the conflict of interest allegations would not disappear by forcing the application upon conflicted judges. Instead, it would force severe and serious delay to address the statutory (28 U.S.C. § 455(a)) and constitutional prescriptions and arguably suspend the privilege for an indeterminate period.

Since the district judges are barred from hearing petitioners' claims and this Court refuses to do so, Petitioners may have to resort to the only remaining available courts, *i.e.*, the courts of the

several states, to pursue their constitutional protections, which would be contrary to controlling precedent. *Tarble's Case*, 80 U.S. 397, 411 (1871)("no just reason to believe that [federal judicial officers] will exhibit any hesitation to exert their power, when it is properly invoked. Certainly there can be no ground for supposing that their action will be less prompt and efficient in [habeas] cases than would be that of State tribunals and State officers."). *Cf. Testa v. Katt*, 330 U.S. 386, 390-94, n.6-8 (1947)(state courts must enforce federal statutes); *McNett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 233-34 (1934)(same).

The "public importance of the questions raised...and the duty which rests on the courts...to preserve unimpaired the constitutional safeguards of civil liberty, and . . . the public interest require[s] that [this Court] consider and decide those questions without any unavoidable delay." *Ex parte Quirin*, 317 U.S. 1, 19 (1942). *Cf. INS v. Chadha*, 462 U.S. 919, 936-37 (1983); *Boumediene,* 167 L.Ed 2d at 1479-81.

Thus, because good grounds precluding transfer to any district court has been positively asserted, it appears that 28 U.S.C. § 2241(b)'s discretion is precluded on the presumptively true facts of this case. Regardless, such discretion is limited to declining to entertain the application and transfer to a district court. That cannot be done without violating 28 U.S.C. § 455(a) and/or arguably violating due process of law. *Aetna*, 475 U.S. 813, 824-25 (1986); *Murchison*, 349 U.S. 133, 136 (1955); *Offutt v. United States*, 348 U.S. 11, 14 (1954). Thus, this Court's avoidance canon, if not § 455 and due process of their own force, precludes the district

courts from hearing the petition. *Richardson v. United States*, 526 U.S. 813, 830 (1999).

However, in the event the Court decides that the district courts are not precluded from hearing the petition, the Court should transfer the petition to the appropriate district courts for hearing and determination as required by 28 U.S.C. § 2241(b).

Accordingly, petitioners submit that they have demonstrated sufficient grounds pursuant to S.Ct. R. 44.2 that should grant a rehearing of their petition, or, alternatively, that the Court should transfer the petitions to the appropriate district courts.

Respectfully submitted,

RALPH C. BUSS
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David E. Koerner
Of Counsel

CERTIFICATE OF COUNSEL

I certify that this petition for rehearing is restricted to the grounds specified in S.Ct.R. 44.1 and that it is presented in good faith and not for delay.

RALPH C. BUSS
Counsel of Record

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of this Petition have been sent by Regular Mail, Postage Prepaid, to: Paul D. Clement, Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20503-0001; Peter D. Keisler, Acting Attorney General, U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20503; Harley Lappin, Director, Bureau of Prisons, Central Office, 320 First St., N.W., Washington, D.C. 20534; and R.V. Veach, Warden, USP Terre Haute, U.S. Penitentiary, 4700 Bureau Rd. South, Terre Haute, IN 47802, this 11th day of December 2007.

RALPH C. BUSS
Counsel of Record